UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 1:19-CR-20020-RAR

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN GOMEZ ALVAREZ, MARCOS MALDONADO ACOSTA, and PEDRO GARCES-CARTAGENA,

Defendants.
_____/

ORDER DENYING MOTION TO SUPPRESS

THIS CAUSE comes before the Court upon Defendant Pedro Garces-Cartagena's Motion to Suppress Evidence, filed June 3, 2019 (the "Motion") [ECF No. 75]. Defendant Juan Gomez-Alvarez joined in the Motion [ECF Nos. 76, 77]. At issue is the search and seizure of a package sent by Garces-Cartagena to Miami International Airport, via AmeriJet. On December 17, 2018, U.S. Customs and Border Protection (CBP) officers conducted a search of the AmeriJet International Airlines cargo facility at Miami International Airport. Pursuant to their authority to conduct warrantless searches at the United States border, the officers opened several packages in the section of the cargo facility designated exclusively for international shipping. One of the packages the officers opened without a warrant was Garces-Cartagena's package. Inside the package, the officers found smaller packages containing a white powdery substance which they later confirmed to be cocaine. Although Garces-Cartagena had shipped the package domestically from Puerto Rico to Miami, AmeriJet misplaced the package in its cargo facility section designated exclusively for international shipping.

Garces-Cartagena moves to suppress the evidence obtained from the search, asserting the search violated the Fourth Amendment because it was warrantless and did not fall under the border search exception to the search warrant requirement. *See* Motion at 4–5. The Government argues that the search complied with the Fourth Amendment because (1) Garces-Cartagena had no reasonable expectation of privacy in the package, (2) the search was a valid border search, and (3) the CBP Officers who conducted the search did so in good faith. *See* Government Response at 2 [ECF No. 78]. The Court held a hearing on the Motion on August 26, 2019. For the reasons stated at the hearing and further discussed below, the Motion is denied because the Court finds that Garces-Cartagena lacked an objectively reasonable expectation of privacy in the package searched and the Officer who conducted the search acted in a good faith belief that the package was subject to a border search, and thus exclusion of the evidence would not to deter further Fourth Amendment violations.

The Court finds that Garces-Cartagena did not have an objectively reasonable expectation of privacy in the package that was searched at the AmeriJet International Airlines cargo facility at Miami International Airport. Garces-Cartagena had no reasonable expectation of privacy in the package because two AmeriJet shipping documents—a Shipper's Letter of Instruction and Air Waybill—advised him that the contents of the package may be subject to inspections. The Shipper's Letter of Instruction stated that "[b]y signing this form [the signatory] hereby consent[s] to screening this shipment as per Transportation Security Administration (TSA) requirements." *See* Gov. Hearing Exhibit No. 4. The Air Waybill advised Garces-Cartagena that AmeriJet "shall comply with all applicable laws and government regulations of any country to or from which the cargo may be carried . . . ." *See* Gov. Hearing Exhibit No. 5. At the hearing, Garces-Cartagena testified that he signed the Air Waybill, but said he never filled out or signed the Shipper's Letter

of Instruction, or saw it prior to his prosecution in this action. However, the Court finds that Garces-Cartagena signed, or had someone sign on his behalf, both the Air Waybill and Shipper's Letter of Instruction, thus being warned that the package was subject to inspection.

Because Garces-Cartagena expressly acknowledged that the TSA may screen the package and further understood that it would be subject to the laws and regulations of the United States, Garces-Cartagena did not have an objectively reasonable expectation that the package's contents would remain private. *See U.S. v. Young*, 350 F.3d 1302, 1308 (11th Cir. 2003) ("No reasonable person would expect to retain his or her privacy interest in a packaged shipment after signing a[] [form] containing an explicit, written warning that the carrier is authorized to act in direct contravention to that interest."). In *Young*, the Court of Appeals for the Eleventh Circuit held that a defendant lacked a reasonable expectation of privacy in packages he shipped through Federal Express because he signed an airbill contract with the carrier warning the defendant that the carrier may "open and inspect" his packages. *See id.* at 1307–308. Without a search warrant, the Internal Revenue Service requested that Federal Express deliver the package to it; which Federal Express did. *Id.* at 1304–305. Here, the warnings on the Air Waybill and Shipper's Letter of Instruction are even more compelling than the warning on the airbill in *Young* because AmeriJet warned that a government agency, the TSA, may screen the package.

In addition, even assuming *arguendo* that Garces-Cartagena had a reasonable expectation of privacy in the package, the Court finds that exclusion would be inappropriate here because it would fail to deter future violations of the Fourth Amendment. The Court found highly credible the testimony of Varendra Maraj, one of the CBP officers who conducted the search. Because the package was located in the section of the cargo facility used exclusively to store international shipments, clearly separated from the domestic shipments section, and had no labeling or other

indication that the package was other than an international one, Officer Maraj and his fellow officers believed in good faith that the package came from a foreign nation, and not Puerto Rico, and, therefore, was subject to a border search. Because the officers who searched the package believed in good faith that they were conducting a lawful search at a United States border, the Court finds exclusion of the package and its contents would fail to deter future violations of the Fourth Amendment and be inappropriate. *See Davis v. U.S.*, 564 U.S. 229, 237 (2011) ("Where suppression fails to yield 'appreciable deterrence,' exclusion is 'clearly . . . unwarranted.'" (quoting *United States v. Janis*, 428 U.S. 433, 454 (1976))). Accordingly, it is

ORDERED AND ADJUGED that Defendant Garces-Cartagena's Motion [ECF No. 75] is **DENIED**.

DONE AND ORDERED in Chambers in Miami, Florida, on August 28, 2019.

Paul C. Huck
United States District Judge

Copies furnished to:

All Counsel of Record